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South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

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NOTE: Bill summaries included in this document are prepared by the staff of the South Carolina House of Representatives and are not the expression of the legislation's sponsor(s) or the House of Representatives. The summaries are strictly for the internal use and benefit of members of the House of Representatives and are not to be construed by a court of law as an expression of legislative intent.

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HOUSE WEEK IN REVIEW

On Tuesday, January 13, 2004, the House of Representatives commenced the second legislative year of the 115th South Carolina General Assembly.

The House concurred in Senate amendments to **H.3986, REVISIONS TO BINGO GAMING PROVISIONS**, and ordered the bill enrolled for ratification. This bill establishes strict standards for the use of electronic devices used as gaming aids, including but not limited to revisions to current provisions related to: requirements, procedures, and definitions concerning site systems, electronic dabbers, and bingo tickets; requirements regarding use of electronic or mechanical devices designed for bingo games; and procedures which must be followed when an organization or promoter seeks clarification. The bill adds additional restrictions to ensure that the electronic devices will not be used for video poker. The bill also ensures that any federally-recognized Indian tribes authorized to conduct bingo games would be allowed to use the same technology and gaming devices authorized by the bill, but would also not allow them to be used for video poker.

The House of Representatives approved and sent to the Senate **H.3490, a PROPOSED CONSTITUTIONAL AMENDMENT TO ELIMNATE MINIBOTTLE LIQUOR REQUIREMENTS**. This joint resolution proposes to amend the South Carolina Constitution so as to eliminate the detailed requirements for the regulation of alcoholic liquors and beverages, including the provision that on-premises establishments are licensed to sell alcoholic liquors and beverages only in sealed containers of two ounces or less (minibottles). In place of these requirements, the proposed amendment authorizes the General Assembly to regulate the sale of alcoholic liquors and beverages.

The House returned **S.500**, a bill authorizing **CHILDREN'S ADVOCACY CENTERS**, to the Senate with amendments. This bill authorizes Children's Advocacy Centers as a means of coordinating a multi-agency response to child maltreatment and assist in the investigation and assessment of child abuse. Such advocacy centers are designed to enhance safety and minimize trauma for children undergoing forensic interviews, medical examinations, and case reviews. Centers must provide therapeutic counseling services, support services for the child and non-offending family members, court advocacy, consultation, and training for professionals who work in the area of child abuse and neglect, to reduce negative impact to the child and break the cycle of abuse. The legislation establishes criteria for the operation of advocacy centers.

The House approved and sent to the Senate **H.4320, a PROPOSED CONSTITUTIONAL AMENDMENT ON ASSESSMENT OF CORPORATE AGRICULTURAL REAL PROPERTY**. This joint resolution proposes to amend provisions of the South Carolina Constitution governing property assessment ratios for purposes of property tax, so as to eliminate the specific limit of ten shareholders for a corporation to be eligible for a four percent assessment ratio on its agricultural real property and instead provide that the General Assembly shall provide by law the

maximum number of shareholders for a corporation to be eligible for such an assessment ratio.

HOUSE COMMITTEE ACTION

JUDICIARY

The full House Judiciary Committee met on Tuesday, January 13, and reported out two bills providing for **TORT REFORM** provisions.

The Committee gave a report of favorable with amendment on H.3744, the **SOUTH CAROLINA ECONOMIC DEVELOPMENT, CITIZENS, AND SMALL BUSINESS PROTECTION ACT** of 2003. This legislation provides comprehensive revisions for the way in which the state's judicial system handles torts. A tort is a private or civil wrong or injury, including an action for bad faith breach of contract, for which the court provides a remedy in the form of an action for damages. Provisions of the legislation include:

The legislation establishes new provisions for **venue**. The legislation provides that civil actions against a resident individual defendant must be tried in the county where the cause of action arose or where the defendant resides. An action against a nonresident individual must be tried in the county where the cause of action arose. An action against a domestic corporation must be tried in the county of the corporation's principal place of business or where the cause of action arose. An action against a foreign corporation must be tried in the county where the corporation has its principal place of business in this State or where the cause of action arose. The legislation establishes criteria for determining a principal place of business. Current law provides the court may change the place of trial when the county designated is not proper, when there is reason to believe a fair and impartial trial could not take place in the designated county, or the convenience of the witnesses would be promoted by the change. This legislation requires the court to change venue in these circumstances. The legislation eliminates certain specific venue statutes such as those that apply to claims brought against motor carriers.

The legislation establishes new provisions regarding **frivolous lawsuits**. The legislation provides a pleading must be signed by at least one attorney of record, or, if the party is not represented by an attorney, the party must sign the pleading. The signature certifies to the court that the person has read the document and believes, in good faith, the pleading is not frivolous. The attorney may be sanctioned for filing a frivolous pleading, motion, or document and for making frivolous arguments. The party may be sanctioned if he fails to disclose facts necessary to put his attorney on notice that the claim or defense is frivolous. If a document is signed in violation of these provisions, the court may impose an appropriate sanction upon the violator including: an order for the party to pay reasonable costs and attorney's fees; an order for the attorney to pay a reasonable fine to the court; or, a directive of a nonmonetary nature designed to deter future misconduct. The attorney or party must be notified before the imposition of sanctions. They then have thirty

days to withdraw the document or argument, respond to the allegations, or mitigate the effects of the violation. If the court imposes a sanction, they must report their findings to the Commission on Lawyer Conduct.

In an action alleging **professional malpractice**, the plaintiff must file with the complaint, an affidavit of an expert witness specifying at least one negligent act and the factual basis for each claim. The expert must be licensed and either board certified or have actual professional knowledge and experience in the area of practice in which the opinion is to be given.

This bill revises the **statute of limitations for filing an action for a construction defect**. Current law provides that no actions to recover damages in these situations may be brought more than thirteen years after substantial completion of the improvement. The legislation lowers the statute of repose to eight years.

The legislation establishes provisions regarding **Notice and Opportunity to Cure Construction Defects**. The legislation provides that prior to filing a lawsuit against a contractor, engineer, architect, etc. for a defect in an improvement to real property, the plaintiff must provide notice of the defect and give the defendant the right to cure the defect before the lawsuit is filed. The legislation revises current law relating to residential improvements to provide the filing of these claims tolls the statute of limitations until such time as the defect is cured or the claim is considered denied. If a settlement cannot be reached within a 90-day time period, the claim is considered denied and the lawsuit may be filed. The legislation also establishes new provisions regarding Notice and Opportunity to Cure Non-Residential Construction Defects, which applies to all other types of property.

The legislation provides that **postjudgment interest rate** is equal to the prime rate as listed in the Wall Street Journal plus 4%.

The legislation provides for the **South Carolina Noneconomic Damage Awards Act**. The category of noneconomic damages is established to cover damages that are not readily quantifiable in dollar amounts such as damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, or humiliation. The legislation places a cap of 2 million dollars on the noneconomic damages that a prevailing plaintiff in a personal injury action may be awarded. The plaintiff may also be awarded all actual economic damages.

The legislation provides that in actions where **punitive damages** are sought, the jury must determine and state the amount of any punitive damages separately from the amount of compensatory damages. Except in the case of fraud or intentional torts, punitive damages are limited to nine times compensatory damages. If the jury awards more than nine times, the court must reduce the award. The jury is not informed about the limit or any reduction. Under the legislation, all civil actions tried before a jury that involve punitive damages shall be conducted in a bifurcated trial before the same jury. In the first stage of the trial the jury shall: (1) determine and assign liability among the parties; (2) determine and award compensatory damages against the liable parties; (3) determine and award noneconomic damages

against the liable parties, and; (4) determine if punitive damages are warranted against the liable parties. The jury must determine that the liable party's conduct was willful and wanton in order to make a finding that punitive damages are appropriate. No evidence of the defendant's net worth will be admissible during the first stage of a bifurcated trial unless admissible for some purpose other than the amount of punitive damages. If there is a finding that the conduct of the liable party warrants punitive damages, the jury, in the second stage of the trial, shall consider only the amount of punitive damages to be awarded against the liable party. In making its determination the jury shall consider the following factors: (1) the liable party's degree of culpability; (2) duration of the conduct; (3) the liable party's awareness or concealment of the conduct; (4) the existence of similar past conduct; (5) the likelihood that an award will deter this party or other parties from similar conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) the defendant's ability to pay; and (8) any other factor the court considers necessary in order for the jury to make an adequate and informed determination.

The legislation revises **joint and several liability** provisions that pertain to instances where more than one tortfeasor is found to be liable. Current law provides liability among joint tortfeasors is both joint and several meaning that any tortfeasor may be responsible for the entire amount of the judgment. Under the legislation, each defendant against whom recovery is allowed is liable to the claimant only for the defendant's proportionate share of the recoverable damages. The jury or court is required to determine the amount of damages and the percentage of liability for each defendant. When damages from a liable defendant are determined to be uncollectible, a procedure is established for reallocating the uncollectible amount among the other defendants.

The Committee also gave a report of favorable with amendment on **H.4464**, the **MEDICAL MALPRACTICE AND PATIENT SAFETY REFORM ACT**. The legislation establishes a process under which all medical malpractice claims will be reviewed prior to being filed with the court system. To begin a medical malpractice proceeding, a claimant is required to send a demand letter to the Health Care Provider. This tolls the statute of limitations. The claim is submitted to a Medical Review Panel made up of physicians from the same specialty or area of practice. The panel reviews the claim and determines whether the claim has merit. The panel's determination is not admissible in any court proceedings. The panel does not certify the lawsuit. The opinion is forwarded to the health care provider's insurer who has 60 days after receipt of the opinion to adjust the claim. After the adjustment period, the claimant may then proceed to file his action in court. Prior to trial, the parties must participate in mediation or arbitration. The legislation imposes a \$300,000 cap on damages awarded for pain and suffering in medical malpractice liability cases. The jury is not informed of the cap. Pain and suffering does not include permanent disability, disfigurement or scarring, paralysis, or loss of limb or any organ. The cap is adjusted annually for cost of living increases. The legislation includes provisions identical to those included in H.3744 concerning Joint and Several Liability, Contribution, and Frivolous Lawsuits.

The legislation authorizes a judge to make a determination of "unjustifiable conduct" on the part of a testifying expert. If such a finding is made the expert is subject to the jurisdiction of the South Carolina Board of Medical Examiners.

The Board of Medical Examiners is authorized to charge licensure fees in an amount sufficient to carry out its required duties and to investigate complaints effectively.

Under the legislation, the Division of Health and Demographics within the Budget and Control Board shall develop procedures in conjunction with the Board of Medical Examiners that allows that office to keep records of individual Healthcare Providers outcomes. This information shall be made public. In the case of hospitals that name of the hospital will be included in the case of individual healthcare providers the names will be withheld.

The legislation provides that an insurer issuing a policy of healthcare provider medical malpractice insurance shall offer, as a part of the policy or as an optional endorsement to the policy, deductibles and policy limits optional to the policyholder.

Under the legislation, the State Treasurer shall relinquish the management of funds in the Patient's Compensation Fund to the fund's Board of Governors.

BILLS INTRODUCED IN THE HOUSE THIS WEEK

EDUCATION AND PUBLIC WORKS

H.4510 STUDY ON EFFECTIVENESS OF NATIONAL BOARD CERTIFICATION FOR TEACHERS Rep. Townsend

This joint resolution authorizes the State Department of Education to use up to \$90,000 of unexpended funds allocated for National Board Certification to study the effectiveness of the certification program in improving student outcomes. The bill requires that the study be completed by October 31, 2004.

H.4528 SCHOOL FOOD RESTRICTIONS Rep. Altman

This bill prohibits public schools from having available to students on the school grounds during regular school hours, food or drink that does not comply with certain specified dietary limitation requirements. The bill provides that only whole grain products, vegetables, fruits, low-fat milk products or other calcium rich foods, beans, lean meat, poultry, fish, or other protein rich food, and 100% fruit juices and water may be made available to students unless part of a meal served by the school. The bill provides that schools that do not comply with these provisions on two or more occasions shall lose two percent of all state funding for the ensuing fiscal year, and those forfeited funds will revert to the school district of which that school is a part for use by other schools in the district. The bill requires the State Superintendent of Education to implement the provisions of the bill.

H.4537 AERONAUTICS DIVISION Rep. Walker

This bill moves the Division of Aeronautics (the Division), currently within the Department of Commerce, to the Department of Transportation (DOT). The bill creates within the DOT, the State Aeronautics Commission (the Commission), charged to oversee operations of the Division and to appoint the Division director. The bill provides for election of Commission members by legislative delegations of Congressional districts, and provides for members' terms of service. Under the provisions of the bill, the Commission would adopt its own rules and procedures.

The bill provides that the activities of the Division must be funded through the State Aviation Fund and general appropriations to the Division. The bill adds as a function and purpose of DOT, the development of state public airports and an air transportation system.

**H.4539 DETERMINING STUDENT AND SCHOOL PERFORMANCE
RELATIVE TO NATIONAL PERFORMANCE LEVELS Rep. Walker**

This bill repeals that section of law which requires the State Board of Education, following the recommendations of the Education Oversight Committee, to select a norm referenced test to obtain an indication of student and school performance relative to national performance levels.

H.4553 PUBLIC EDUCATION OPEN ENROLLMENT Rep. Walker

This bill provides for "open enrollment," defined in the bill as a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential school choice as a significant factor.

The bill requires districts to provide for open enrollment without charging tuition, except in certain circumstances. The bill delineates requirements for procedures and processes which must be included in a district's required open enrollment plan.

**H.4556 SOUTH CAROLINA RELOCATION AND RECONSTRUCTION
AGREEMENT ACT Rep. Townsend**

This bill empowers municipalities, counties, local zoning authorities, or political subdivisions to enter into "relocation and reconstruction agreements" with sign owners to relocate or reconstruct signs. Absent such an agreement, a local governing body may not remove an off-premises sign located in view of an interstate, highway, street, or road when the sign is lawfully erected, without payment of just compensation. The bill provides for mediation or arbitration between the local governing body and the sign owner when they fail to reach an agreement.

H.4557 PER PUPIL EXPENDITURE REQUIREMENTS Rep. Townsend

This bill repeals the current section of law which requires a certain level of financial effort per pupil from each school district.

JUDICIARY

H.4506 COMMISSION ON WOMEN ESTABLISHED AS A STATE AGENCY

Rep. Cobb-Hunter

This bill establishes the Commission on Women as a separate and autonomous state agency and provides that the commission is no longer a part of the office of the Governor.

H.4517 SOCIAL SECURITY NUMBERS NOT TO BE REQUIRED IN REQUESTS FOR RESTRAINING ORDERS/ ORDERS OF PROTECTION

Rep. G. M. Smith

This bill provides that courts may not require a person seeking an order of protection or a restraining order against a person engaged in harassment or stalking to disclose his social security number.

H.4529 HONORING VALID OUT-OF-STATE CONCEALABLE WEAPON PERMITS

Rep. M. A. Pitts

This bill provides that valid out-of-state permits to carry concealable weapons held by a resident of another state must be honored by this state. The bill eliminates current reciprocity provisions under which the state honors only those valid out-of-state permits from states that SLED has identified as having permit issuance standards that are at least as stringent as South Carolina's.

H.4530 RETIRED OR DISABLED POLICE OFFICERS MAY LAWFULLY CARRY PISTOLS

Rep. M. A. Pitts

This bill provides that retired police officers or disabled police officers, who are not psychologically disabled, may lawfully carry pistols.

H.4531 INCLUSION OF ESSIE MAE WASHINGTON-WILLIAMS AMONG THE NAMES OF CHILDREN ENGRAVED ON THE THURMOND MONUMENT AT THE CAPITOL

Rep. J. Brown

This joint resolution directs the South Carolina State House Committee to modify the monument erected on the grounds of the Capitol Complex in recognition of the accomplishments of the late United States Senator Strom Thurmond so as to include the name of Essie Mae Washington-Williams among the engraved names of his children.

H.4538 LEGISLATIVE AUDIT COUNCIL PROVISIONS REPEALED

Rep. Coates

This bill repeals the chapter of the code containing the provisions for the Legislative Audit Council.

H.4543 FRAUDULENT TAKING OF FOREST PRODUCTS AND PINE STRAW

Rep. Lucas

This bill revises provisions relating to cutting, removing, or transporting timber, logs, or lumber without permission, so as to include the fraudulent taking of forest products and pine straw. Penalties are provided.

**H.4545 ASSESSMENT ADDED TO UNDERAGE ALCOHOL FINES TO FUND
YOUTH ALCOHOL PREVENTION PROGRAMS** Rep. Lourie

This bill adds an assessment of twenty-five dollars to the fines for unlawful purchase or possession of alcoholic liquors and the fines for unlawful purchase or possession of beer, ale, wine, malt, or other fermented beverage and provides for the distribution of the additional assessment to the Department of Alcohol and Other Drug Abuse Services for youth alcohol prevention programs.

H.4552 "SOUTH CAROLINA TRUTH TO VOTERS ACT" Rep. Govan

This bill provides that an individual who executes a candidacy pledge with a political party for purposes of offering for election, who is subsequently elected to that office, and who changes his political party affiliation while serving in that office is deemed to have vacated the office to which he was elected effective the date of the change in the political party. A vacancy in the office must be declared and the office filled in the manner provided by law.

LABOR, COMMERCE AND INDUSTRY

H.4507 COUNTYWIDE TOLL-FREE CALLING REQUIRED Rep. Scott

This bill provides that the Public Service Commission shall require countywide toll-free calling to be provided by all telephone utilities operating within a county by July 1, 2004.

**H.4549 COVERAGE OF FOOD FOR TREATMENT OF PHENYLKETONURIA
REQUIRED UNDER HEALTH INSURANCE FOR NEWBORNS** Rep. Viers

This bill revises provisions relating to health insurance coverage of newborns, so as to provide that such coverage includes medically necessary formulas and food products for treatment of phenylketonuria (PKU).

H.4550 CONSUMER LOAN FINANCE CHARGES FOR SUPERVISED LENDERS
Rep. Viers

This bill revises provisions relating to loan finance charges for consumer loans, so as to provide that a supervised lender may not contract for and receive a loan finance charge in excess of thirty-six percent a year in connection with a consumer loan.

**H.4560 ELIMINATION OF THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION'S AUTHORITY TO DOUBLE/RETAIN
FINES/PENALTIES** Rep. Young

This bill eliminates provisions that authorize the South Carolina Workers' Compensation Commission to double and retain fines and penalties assessed for violations of the South Carolina Workers' Compensation Law.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

S.104 *LEGALIZING TATTOOING* Sen. Mescher

This bill authorizes and provides for the practice of tattooing in South Carolina. Tattooing is currently prohibited in this State except when performed by a licensed physician under certain medical conditions.

The bill directs the Department of Health and Environmental Control (DHEC) to promulgate regulations which establish sterilization, sanitation, and safety standards for persons engaged in the tattoo business. Prior to performing tattoo procedures, a facility must obtain a license. Before obtaining such license, a facility must meet certain requirements outlined in the bill, and a tattoo facility may not engage in any retail business other than tattooing.

The bill provides infection control requirements and provides other client-protective measures with which tattoo artists must comply. The bill also outlines other specific requirements for tattoo artists and tattoo facilities, including but not limited to certain artist certification requirements, and requirements with which tattoo facilities must comply when operating a tattoo facility.

The bill empowers DHEC to revoke, suspend, or refuse to issue or renew a tattoo license and to invoke a monetary penalty under certain conditions, including but not limited to, failure to maintain an address or phone number at which the facility may be reached during business hours, and failure to maintain proper safety, sanitation, or sterilization procedures.

The bill prohibits tattooing a person under eighteen years of age except with certain written agreement from, or the presence of, the person's parent or legal guardian. The bill prohibits tattooing a person impaired by alcohol or drugs; tattooing skin surfaces which have certain unhealthy conditions present; or tattooing any part of the head, face, or neck of a person. Violation of these prohibited practices is a misdemeanor punishable by fine and/or imprisonment as provided in the bill.

WAYS AND MEANS

H.4509 *PAYROLL DEDUCTION FOR PREPAID LEGAL SERVICES* Rep. Leach

This bill authorizes and provides for, under certain conditions, state employee payroll deductions for the payment of eligible prepaid legal services.

H.4518 *FEDERAL ENHANCEMENT FUNDS* Rep. G.M. Smith

This bill prohibits the Department of Transportation from allocating enhancement funds received from the federal government and requires that the allocation of these funds be determined by the metropolitan planning organizations for projects located within their jurisdictions.

**H.4519 REPEAL OF PROVISION REGARDING LOCAL OPTION
SALES TAX** Rep. G.M. Smith

This bill repeals the current requirement that no eligible unit within a county area may receive less from the distribution of the local option sales tax than it received in the previous fiscal year. The bill also repeals the current requirement that, if the amount of collections from the sales and use tax in the county area is less than the preceding fiscal year's collections, then the distributions to the eligible units within the county area must be reduced on a proportional basis.

H.4520 MAGISTRATES RETIREMENT PROVISIONS Rep. Rutherford

This bill allows a magistrate participating in the South Carolina Police Officers Retirement System to retire and be reappointed as a magistrate. The bill also provides that certain eligibility criteria for service as a magistrate do not apply to a magistrate serving on June 30, 2001, who retires and returns to service pursuant to the provisions of this bill.

**H.4521 EARLY RETIREMENT FROM POLICE OFFICERS RETIREMENT
SYSTEM** Rep. Rutherford

This bill authorizes a phased-in reduction - from twenty-five years to twenty-three years - of the required service of a member of the Police Officers Retirement System (the System) to elect retirement at any age without penalty. The bill further requires the State Budget and Control Board to increase employer and/or employee contributions to the System sufficient to pay the actuarial cost of this reduction.

**H.4522 EARLY RETIREMENT FROM POLICE OFFICERS RETIREMENT
SYSTEM** Rep. Rutherford

This bill authorizes a phased-in reduction - from twenty-five years to twenty years - of the required service of a member of the Police Officers Retirement System (the System) to elect retirement at any age without penalty. The bill further requires the State Budget and Control Board to increase employer and/or employee contributions to the System sufficient to pay the actuarial cost of this reduction.

H.4523 RETURN TO WORK AFTER RETIREMENT Rep. Cotty

This bill provides that no reduction may be made to the disability retirement benefit of members of the South Carolina Retirement System or the South Carolina Police Officers Retirement System who return to service after retirement unless the member's compensation exceeds the greater of the member's average final compensation or \$50,000 a year. The bill also provides that a disability retiree returning to covered employment does not have his benefit terminated and become an active contributing member unless the member's compensation from covered employment exceeds the greater of the member's average final compensation or less than \$50,000 a year.

S.732 COLLECTION OF DELINQUENT PROPERTY TAXES Sen. Pinckney

Currently, the tax assessor, county treasurer, and county auditor may divide a divisible parcel of real property for purposes of the delinquent tax sale and offer a portion of the parcel sufficient to satisfy the payment of the taxes, assessments, penalties, and costs. This bill makes this provision a requirement.

H.4527 STATE INCOME TAX DEDUCTIONS Rep. M.A. Pitts

This bill extends to reserve police officers who meet certain eligibility requirements, the State income tax deduction currently allowed for eligible volunteer firemen, volunteer reserve squad members, and volunteer members of a Hazardous Materials Response Team.

H.4532 FEDERAL CENTERS FOR DISEASE CONTROL GRANTS Rep. Rice

This bill establishes, provides for, and requires a grant review panel for grants received by the Department of Education from the Federal Centers for Disease Control. The bill requires that the panel ensure that any grants or contracts awarded from these funds are administered pursuant to the South Carolina Comprehensive Health Education Program.

H.4554 SALES AND USE TAX EXEMPTIONS Rep. Herbkersman

This bill sunsets state sales and use tax exemptions under the South Carolina Sales and Use Tax Act every three years, beginning in 2005. The bill provides for reinstatement of a specific exemption under certain conditions, including but not limited to a separate affirmative recorded two-thirds vote in each house of the General Assembly.

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